

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

APR 03 1986

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Petition of

NORTHWEST UNITED EDUCATORS

CASE 19

NO. 35385

To Initiate Mediation-Arbitration  
Between Said Petitioner and

MED/ARB-3403

Decision No. 23069-A

SCHOOL DISTRICT OF SHELL LAKE

## APPEARANCES

Stephen Weid, Mulcahy and Wherry, S.C., on behalf of the District

Alan D. Manson on behalf of NUE

On December 12, 1985 the Wisconsin Employment Relations Commission appointed the undersigned Mediator-Arbitrator pursuant to Section 111.70(4)(cm)6b. of the Municipal Employment Relations Act in the dispute existing between the above named parties. Pursuant to statutory responsibilities the undersigned engaged in mediation with the parties on January 16, 1986 which did not result in resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on the same date for final and binding determination. Post hearing exhibits and briefs were filed by the parties, which were exchanged through the undersigned by March 11, 1986. Based upon a review of the evidence and arguments, and utilizing the criteria set forth in Section 111.70 (4)(cm) Wis. Stats., the undersigned renders the following arbitration award.

## ISSUES:

This dispute is over the District's 1985-1986 salary schedule. The parties also disagree upon the extent to which the settlements in the area, but outside the District's Athletic Conference, and statewide settlements, should be relied upon as comparables; NUE arguing that they should and the District arguing that they should not.

The District proposes dropping the first step of the current salary schedule, creating a new base salary of \$15,923, and adding one additional step to the maximum, utilizing the current increment structure.

NUE proposes increasing each cell of the 1984-1985 salary schedule by 6.5%.

The differences between the costs of the offers follows:

Wages Only	Board	NUE
Average teacher		
Increase	\$1,201	\$1,672
% Increase	5.8%	8.07%

Total Package

Average teacher		
Increase	\$1,639	\$2,235
% Increase	6.05%	8.25%

ASSOCIATION POSITION:

The parties agreed in a consent award for 1984-85 to dramatically modify the teachers' salary schedule. The District is attempting to do so again in this proceeding without the NUE's consent, and without adequate funding to achieve a settlement which is comparable to the settlements that have been achieved in comparable districts.

The restructuring that occurred in 1984-1985 was designed to provide incentives to teachers to obtain additional educational credits and to provide some disincentive to teachers who were not obtaining such additional graduate credits.

However, sufficient time has not passed since the parties agreed to this new schedule to allow the teachers who had not been going back for graduate credits to do so in a fashion which could be demonstrated on the schedule. In spite of this lack of passage of time, many of these teachers would only receive a 4.1% increase under the District's proposal, which is by any comparable measurement, drastically below the average increase being received by similarly situated teachers.

Furthermore, the quid pro quos that occurred in 1984-85 which provided meaningful incentives for teachers are dramatically missing in the District's 1985-86 proposal.

It is also significant that in 1984-1985 it was understood that the changes would be given an opportunity to work prior to the schedule being modified again in any significant manner, and this understanding is being ignored by the District.

Relatedly, it is important to note that a party wishing to make changes in a proceeding such as this must accept a burden of proof commensurate with the degree of change being sought. Because the Board's proposal would have a severe, negative impact on much of the bargaining unit, it has a substantial burden to meet to justify its proposed changes. The record on the other hand clearly indicates that it has failed to do so.

Furthmore, on the basis of comparability, NUE's offer is the more reasonable of the two at issue herein. In this regard, because of unique circumstances which exist in the Athletic Conference settlements which have been achieved to date, a larger group of schools should be utilized in determining the comparability of the parties salary offers. In this regard it is noteworthy that only six of the 15 Athletic Conference districts have settled to date, and of these six, four are marked by unusual circumstances. One, Birchwood, is the second half of a two year contract, and arbitrators have often found such agreements to be of less value than more contemporaneous settlements. The Bruce settlement is also unusual in that it incorporates the equivalent of two frozen increments. The Clayton settlement is also not really comparable since it occurred at a time when the District was experiencing substantial economic difficulties which have been manifested in the form of a significant number

of teacher layoffs. Lastly, the Northwoods (Minong) settlement is also unique.

All of the foregoing considerations make reliance on Athletic Conference settlements unreliable for purposes of determining the comparability of the parties' proposals herein. Under similar circumstances, arbitrators have frequently found that comparables outside of an athletic conference can be appropriate<sup>1</sup>

Even if Conference settlements are utilized as the comparable pool, they still support the reasonableness of NUE's offer, particularly if one compares what teachers will actually receive in the form of increases. Using this basis of comparison, NUE's offer is right at the average.

On the other hand, under the Board's proposal, 39 of the 42 District teachers would receive nearly \$500 less than the average raise paid to similarly situated teachers in other districts, so that three might receive raises which are no more than \$150 above the average.

In this regard the record indicates that most settlements for 1985-1986 in the northwest area take the form of across the board percentage per cell wage rate increases which average nearly seven percent. Taking this into account, and adding 1.5 to 2% for increments, as well as .5% for increased retirement, it is reasonable to conclude that comparable overall settlements amount to about 8.5 to 9.5 % packages.

NUE's offer of 6.5% per cell clearly comes closest to the vast majority of the comparable area settlements, while the District's proposed restructuring of the salary schedule cannot be found in any other 1985-1986 settlement.

Further support for NUE's proposal can be found in the fact that the parties have agreed to raise miscellaneous pay rates by 6.5%, which approximates the NUE offer herein.

While the Board may feel that the troubled farm economy must be given due consideration, there is no evidence to support the District's contention that such problems have had a different impact on other Conference or area school districts. Under such circumstances, it is not in the best interest of the public to receive increases which are far below comparable averages.

In response to the District's arguments, NUE submits that the District has failed to provide any evidence that there is a need to raise the District's minimum salaries disproportionately, particularly where as a result a majority of the District's teachers would receive increases which are substantially below comparable averages. In this regard it is noteworthy that in 1984-1985 the District's BA and MA minimums were well above comparable averages. It is also significant in this regard that under NUE's proposal nothing will change in this regard.

NUE does not disagree with the District that the District's starting salaries are too low, however, this problem should not be corrected at the expense of the rest of the teachers in the bargaining unit, and that is precisely what the District is attempting to do herein.

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<sup>1</sup>Citations omitted.

**DISTRICT POSITION:**

For purposes of this proceeding the parties' offers should be compared with the settlements in the District's Athletic Conference. This selection is supported by the weight of the most relevant arbitral authority.<sup>2</sup> In fact, the Lakeland Athletic Conference has historically been utilized by mediator/arbitrators in proceedings involving many districts in the Conference.<sup>3</sup>

On the other hand, NUE has relied on districts in a wide, disparate geographic area which runs contrary to the established criterion of geographic proximity. In fact, NUE has failed to demonstrate that its proposed comparable districts meet any of the traditional, accepted criteria of comparability, including similarities in enrollment, equalized evaluation, state aid per pupil, levy rate and school costs.

Furthermore, the Board's offer more reasonably offers a balance between the public interest and the employees' interest.

In this regard it is critical to note that the District provides educational services to a primarily rural, farm populace which is experiencing significant economic problems. NUE's offer fails to take into consideration the economic constraints faced by the populace and the District resulting therefrom.

Arbitration case law amply illustrates that consideration has repeatedly been given to economic circumstances of a district's citizenry, short of an inability to pay argument.<sup>4</sup>

In this regard the record also indicates that the District has taken many actions to reduce District spending in order to lessen the burden on the District's taxpayers.

For these reasons the Board submits that its offer of a total compensation settlement of 6.05%, which improves the rank order position of the District's teachers, would be a fair and equitable resolution to the parties' 1985-1986 negotiations.

It is also critical to note in this dispute that the Board's proposal is necessary in order to drastically raise minimum salaries in order for the District to remain competitive with comparable districts. Thus, the Board has attempted to place the maximum amount of new dollars at the most important positions on the schedule, the minimum salaries.

No current teachers would be disadvantaged by the Board's proposed distribution since they would all receive the dollar value of their vertical step movement, with the additional bonus of one more year of vertical movement on the schedule.

The Board's offer also responds to a growing need to raise starting salaries for teachers, in order to recruit, and retain, qualified teachers in the District.

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<sup>2</sup>Citations omitted.

<sup>3</sup>Citations omitted

<sup>4</sup>Citations omitted.

At the same time, the Board has attempted to address this problem within the limited financial resources available to it due to the economic crisis facing the majority of the District's taxpayers.

Even with those constraints, it is noteworthy that under the Board's proposal, all teachers in the District would receive increases that exceed the increase in the Consumer Price Index.

A comparison of teacher salaries in comparable districts also supports the reasonableness of the Board's offer. In fact, at the salary benchmarks, the Board's proposed increases either exceed or are closer to the average increases received in comparable districts than is the case under NUE's proposal.

The Board's offer also maintains the historical ranking of the District's teachers among comparable districts. In this regard it is significant that the District has achieved a comparative ranking that is very competitive with the District's comparables, considering the size of the District.

The Board's offer is also more reasonable than NUE's when it is compared with the total compensation provided to teachers in comparable districts.

Still further support for the Board's offer can be found when one compares it with the very modest wage increases which have been granted public employees in Burnett and Washburn counties.

In response to NUE's contentions herein, NUE's estimates of total package settlement figures is totally unsupported by the record evidence, and therefore, such estimates should not be utilized in this proceeding.

Based upon the record evidence, the only fair and accurate method of establishing the reasonableness of the offers is to analyze the data on benchmark increases in comparable districts.

Furthermore, NUE's reliance on comparability circumvents the weight which must be accorded to the other criteria set forth in the Wisconsin Mediation/Arbitration law. In this regard, the Board's proposal more fully addresses and considers all relevant statutory criteria.

**DISCUSSION:**

In the undersigned's opinion the instant matter does not readily lend itself to a traditional benchmark analysis of the parties' salary proposal for several reasons; the most important of which is the fact that the District, as well as many of its comparable districts, has restructured its' salary schedule so that teacher placement thereon does not correlate with actual years of teaching experience, thus making it difficult, if not impossible, to ascertain the impact of increases on salary schedule cells will have on teachers moving through such schedules.

In addition, comparisons in this case are even more difficult to make because several of the critical settlements among the District's traditional comparables are functions of relatively unique circumstances which make such comparisons of limited utility. While NUE would have the undersigned consider a broader population of districts for the purpose of making such comparisons, a good number of the districts it proposes are substantially larger than the District herein, and some are proximate to urban areas which

have different types of labor markets, thereby limiting the utility of such comparisons as well.

Based upon all of these considerations the undersigned is of the opinion that traditional salary benchmark comparisons should not be determinative of the outcome of this dispute, and instead, the general comparability of the parties proposals will be only one of the several statutory criteria which will be considered in determining its' outcome.

In that regard the undersigned is of the opinion that several statutory criteria support the reasonableness of the District's proposal. These include the increase in the cost of living, which the Board's proposal exceeds by several percentage points. Another factor supporting the reasonableness of the District's position are the settlements of other public sector employees in the area, which generally do not even match the Board's proposal. And finally, the Board's proposal seems to be supported by the interest and welfare of the public in the District, which indisputably is experiencing difficult economic times, and which the Board is understandably trying to respond to by by curtailing the inevitably increasing costs of providing quality educational services.

All of the foregoing would seem to support the selection of the Board's proposal; however, two other statutory criteria must also be considered and balanced against the foregoing criteria in determining the relative reasonableness of the parties positions.

The first of these is comparability and in that regard it would appear that NUE's proposal is supported by this criterion, even though the evidence in the record on this criterion leaves something to be desired. In this regard it would appear that the increases proposed by NUE fall within the mainstream of the increases which have been agreed upon in comparable districts both within the District's Athletic Conference, as well as in the general area. Relatedly, it would appear that at the points on the schedule which the District is attempting to make significant changes, i.e., at the minimums and at the Masters maximums, the District's salaries are already well above the comparable averages, and the Board's proposal would, on the basis of comparability, unnecessarily enhance the differences in this regard which already exist. While the objectives the District are trying to achieve in this regard would appear to be meritorious, they are certainly not justified on the basis of comparability, nor do the problems which the District is attempting to address appear to be sufficient to justify increases for a large portion of the teaching population in the District which fall well below comparable averages.

Just as importantly, another factor which supports the reasonableness of NUE's proposal is the fact that the parties voluntarily agreed last year to modify their salary schedule to address the same problems the Board is attempting to address herein. In view of that fact, and the fact that sufficient time has not passed to allow said changes to have an impact on the education of the teachers in the District, the undersigned is of the opinion that he must exercise restraint in approving such structural changes at this time. While the undersigned is not adverse to approving such changes where legitimate problems are shown to exist, where, as here, the parties have attempted to deal with the problem in the recent past voluntarily, additional tampering with the structure of the schedule by a third party would appear to be unjustified.

Thus, based upon all of the foregoing considerations, the undersigned is of the opinion that the Board's proposal cannot be supported at this time, even though it comports with several important statutory criteria

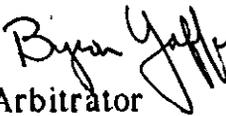
Based upon all of the foregoing, the undersigned hereby renders the following:

ARBITRATION AWARD

NUE's final offer shall be incorporated into the parties' 1985-1986 collective bargaining agreement

Dated this 3<sup>rd</sup> day of April, 1986 at Madison, Wisconsin

Byron Yaffe

  
Arbitrator